

REMARKS

The outstanding Office Action was issued in response to the Continued Prosecution Application (CPA) which was properly and timely filed on June 5, 2003 pursuant to 37 C.F.R. Section 1.53(d)(1)(i)(C). It was appropriate to file a CPA because this application is a nonprovisional application that is the national stage of PCT App. No. PCT/US99/00419) filed January 8, 1999. As stated in 37 C.F.R. Section 1.53(f), the filing date of an international application designating the U.S. is treated as the filing date in the U.S. Nonetheless, the outstanding Office Action acts upon the CPA as if it were a Request For Continued Examination (RCE).

As a result, the Office Action takes the erroneous position that the Applicant is not permitted to change the claimed invention from what was examined in the original application, and has refused to substantively examine claims drawn to pharmaceutical compositions and some of the claims drawn to compounds. The Office Action sets forth a restriction requirement, and then states that the Applicant constructively elected claims 13-21 and withdraws all other claims from consideration. The undersigned had a telephone discussion with Examiner Vollano on July 18, 2003 regarding this, and on that day the Examiner was kind enough to review this file. At that time, she confirmed that a clerical error had been made at the Patent Office, resulting in the the CPA being acted upon incorrectly. The Examiner advised that she would not be able to withdraw this Office Action, and that we should respond by filing a written Response to the

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Office Action, advising the Patent Office of its error, and requesting that the application be reconsidered in a manner consistent with the rules of CPA practice.

Accordingly, Applicant hereby requests that the Patent Office re-review the CPA application and amended claims as filed therewith, and issue a new non-final Office Action setting forth any rejections or other requirements regarding those claims. If the Examiner deems it necessary in order to be fully responsive to this Office Action, the Applicant hereby traverses the restriction requirement and provisionally elects Group VIII (which is believed to contain claims 11, 12, 14-21 and 30, although it is not clear from page 6 of the Office Action what exactly the Patent Office believes is in this group). In addition, Applicant respectfully traverses any and all rejections set forth in the Office, including the rejection of the claims under 35 U.S.C. Sections 112, 102 and 103. Applicant looks forward to a new Office Action clarifying the foregoing.

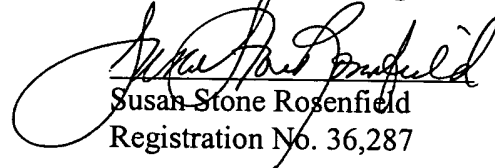
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The Examiner is invited to telephone the undersigned if she believes it would in any way facilitate prosecution of this application.

Dated: December 17, 2003.

Respectfully submitted,

FENNEMORE CRAIG


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Registration No. 36,287

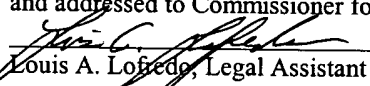
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Date of Deposit: 12/17/03

I hereby certify that this paper and any documents referred to herein are being deposited on the date indicated above with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10, postage prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Louis A. Lofredo, Legal Assistant

12/17/03
Date of Signature